



CRL MP(MD) No.15356 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Sixth day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL.M.P.(MD)No.15356 of 2023

in

CRL.A.(MD)No.66 of 2023

PONNUCHAMY

... PETITIONER/ PETITIONER/ PETITIONER

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.
CRIME NO. 6/2020

... RESPONDENT/ RESPONDENT/ RESPONDENT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed by Special Court for POCSO Act cases, Virudhunagar District at Srivilliputhur in Special S.C no. 65/2020 dt. 22.08.2022 and enlarge the petitioner on bail pending disposal of the criminal appeal

Prayer in CRL A(MD). 66/ 2023 :

To call for the records relating to the conviction Judgment and sentence passed by Special Court for POCSO Act cases, Virudhunagar District at Srivilliputhur in Special S.C no. 65/2020 dt. 22.08.2022 and set aside the same and acquit the appellant.



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Order : This Criminal Miscellaneous petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR. K.P.NARAYANAKUMAR, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Reserved on : 29.11.2023

Pronounced on : 06.12.2023

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Spl.S.C.No.65 of 2020 dated 22.08.2022 by the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2. The case of the prosecution is that on 17.04.2020 at about 02.00 p.m., when the victim girl was playing near her house, the accused misbehaved with her sexually by touching her private parts and also forcing her to touch his private parts. Based on the complaint, F.I.R. was registered in Crime No.6 of 2020 for the offence under Section 9(m) r/w 10 of POCSO Act, 2012. After completion of investigation, final report was filed before the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur and the same was taken on file in Spl.S.C.No.65 of 2020.



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3. Before the trial Court, on the side of the prosecution, 6 witnesses have been examined as P.W.1 to P.W.6 and 9 documents were marked as Ex.P1 to Ex.P9. On the defence side, no witness was examined and no exhibit was marked.

4. The learned Trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the impugned judgment dated 22.08.2023 convicting the petitioner for the offence under Section 9(m) r/w 10 of POCSO Act, 2012 and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of one year. Challenging the above said conviction and sentence, the petitioner preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. The learned counsel for the petitioner would submit that even as per the case of the prosecution, in the place of occurrence, where the offence said to be have taken place, three women were allegedly present. Hence, absolutely, there is no possibility or probability for the offences said to have been committed. Those three women witnesses were not examined on the side of the prosecution. The learned counsel for the petitioner would further submit that there are several infirmities in the



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prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses. He would further submit that this is the second application and already the petitioner filed Crl.M.P.(MD)No.985 of 2023 and the same was dismissed on 25.01.2023 and the petitioner is aged about 66 years and is in prison from 22.08.2022 onwards. Hence, he prayed to suspend the sentence imposed on the petitioner.

6. The learned Additional Public Prosecutor appearing for the respondent submitted that the learned trial Judge, upon considering all the evidence on records, has rightly convicted the petitioner. He would further submit that this is the second application and the earlier application was dismissed by this Court on 25.01.2023 and there is no change in circumstances. Hence, he strongly opposed to grant suspension of sentence.

7. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

8. The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The



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fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and the petitioner is aged about 66 years and he is in prison from 22.08.2022 onwards. Hence, this Court is inclined to consider the relief sought in this petition and holds that the petitioner herein is entitled to the relief of grant of suspension of sentence.

9. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended till the disposal of the appeal on the following conditions:-

(i) The petitioner/ Accused is directed to be enlarged on bail on condition that the petitioner/ Accused shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties, each for a like sum to the satisfaction of the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur.

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and



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(iii) The petitioner/Accused shall appear before the trial Court on first working day of every week at 10.30 a.m., until further orders.

sd/-
06/12/2023

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06/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

vsd
TO

- 1 THE JUDGE, SPECIAL COURT FOR POSCO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR
- 2 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI
- 3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



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ORDER
IN
CRL.M.P.(MD)No.15356 of 2023
in
CRL.A.(MD)No.66 of 2023
Date :06/12/2023

SSA/06.12.2023/7P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023